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RECEIVED

DEC 23 2003

December 1, 2003

Federal Communications Commission
Office of the Secretary

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S W.
Washington, D.C. 20554

Re: Public Notice DA 03-3585
RM-10821

Dear Ms. Dortch:

On behalf of Nauticast Schiffsnavigationssysteme, AG, there is transmitted herewith an original and four (4) copies of its "Comments" on the Petition for Declaratory Ruling filed by MariTEL, Inc.

Should there be any questions concerning the enclosure, kindly communicate directly with undersigned counsel.

Very truly yours,

KAYE SCHOLER LLP

By: 

Bruce A. Eisen

Enclosure

11/20/2003
STAPLE

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

RECEIVED

DEC 23 2003

*Federal Communications Commission
Office of the Secretary*

In the Matter of)	
)	
MariTEL, Inc.)	
)	
Petition for Declaratory Ruling)	Public Notice DA 03-3585
and National Telecommunications and)	RM-10821
Information Administration Petition for)	
Rulemaking Regarding the Use of Maritime)	
VHF Channels 87B and 88B)	

**COMMENTS OF
NAUTICAST SCHIFFSNAVIGATIONSSYSTEME AG**

Nauticast Schiffsnavigationssysteme A.G.

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December 1, 2003

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SUMMARY

Nauticast Schiffsnavigationssysteme A.G. ("Nauticast") opposes the Petition for Declaratory Ruling filed by Mantel, Inc. ("Maritel"). Maritel's petition is devoid of the kind of information that is necessary for the Commission to rule satisfactorily on a Petition for Declaratory Ruling. The potential and actual injury to Maritel is wholly unclear. Maritel appears to place its own private interests before those of this country's security.

The FCC's Public Notices of June 2002 adequately set forth the manner in which AIS equipment could be certified. Moreover, operation on Channels 87B and 88B are necessary to protect homeland security and to conform to international agreement. There has been no violation of the Administrative Procedure Act. If nothing else, the military exemption included therein allows operation on the subject channels.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
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VHF Channels 87B and 88B)	

**COMMENTS OF
NAUTICAST SCHIFFSNAVIGATIONSSYSTEME AG**

Nauticast Schiffsnavigationssysteme A.G. ("Nauticast"), by its attorneys, hereby submits its comments in response to the Commission's above-referenced Public Notice, DA 03-3585, released November 7, 2003 ("November 7 Public Notice"). In so doing, Nauticast opposes the Emergency Petition for Declaratory Ruling filed by MariTEL, Inc. ("Maritel") and supports the rulemaking petition filed by The National Telecommunications and Information Administration ("NTIA"). In support thereof, the following is shown:

Introduction

Maritel filed its emergency petition for declaratory ruling on October 15, 2003. Therein, Maritel sought a ruling that shipborne Automatic Identification System ("AIS") transmitters should be precluded by the Commission from operation on Channels 87B and 88B or any other

channel designated for use by VHF public coast ("VPC") shore stations.¹ Maritel asserts that it was the winning bidder of VHF public coast licenses and inland VPC licenses in 1999 and 2001 and that it is the exclusive entity authorized to operate 25 kHz duplex channels for VPC use, including Channels 87B and 88B.

Nauticast was incorporated in 2000 solely for the purpose of developing AIS. It has developed and marketed an AIS system and has sold and delivered a significant number of units. Nauticast has incurred substantial costs in obtaining various international approvals and has established trading relationships for its AIS system throughout the world. Further, it has an active research and development program which seeks to expand the uses for its AIS technology. The Commission granted Nauticast equipment authorization on August 24, 2003 for an AIS device that operates on Channels 87B and 88B. See Attachment 1.

Background

Maritel contends that it filed its emergency petition to remove any alleged uncertainty regarding the use of Channels 87B and 88B by shipborne AIS transmitters that might have been caused by two Wireless Telecommunications Bureau public notices. A June 13, 2002 Public Notice, released in response to a Coast Guard request, permitted the use of shipborne AIS equipment by existing ship station licensees. Public Notice, DA 02-1362, released June 13, 2002. Subsequently, a second public notice set forth the procedures to be used for the

¹ AIS assists ships with appropriate equipment in navigation and collision avoidance especially in congested waters. AIS provides ship identity, position, course and speed. AIS operates in the VHF frequencies ship-to-ship and ship-to-shore through a transponder system. Pursuant to United States Coast Guard ("Coast Guard") regulation, certain classes of ships are required to operate AIS systems. See, Maritime Transportation Security Act of 2002, 46 U.S.C. §70114(a)1(A)-(D).

authorization of AIS equipment. Public Notice, DA 02-1499, released June 27, 2002.² Maritel broadly claims that the Coast Guard made faulty assumptions regarding the use of Channels 87B and 88B for AIS transmission and that the Commission did not permit the authorization of AIS transmitters using the subject channels on a simplex basis.

The International Maritime Organization Maritime Safety Commission had approved carriage requirements for AIS equipment beginning July 1, 2002. In that regard, Channels 87 and 88 were allocated internationally for AIS use, but the treaty also states that administrations may use other channels if Channels 87 and 88 are unavailable. In Amendment of the Commission's Rules Concerning Maritime Communications, Third Report and Order and Memorandum Opinion and Order, PR Docket No. 92-257, 13 FCC Rcd 19853 (1998) ("Third Report and Order"), the Commission, *inter alia*, noted that Channel 87B was currently allocated to VHF public correspondence pursuant to Section 80.371(c) of the Rules and Regulations³ and that Channel 88B was allocated to government non-military agencies. *See*, Section 2.106 of the Rules n.G5⁴. The Commission concluded that two channel pairs should be set aside in each maritime VPC area for AIS in order to enhance the safety of life and property on vessels in United States waters by "reducing collisions, groundings, and environmental harm, further effectuating our regulatory goal of fostering the protection of life and property at sea through the use of maritime radio spectrum." 13 FCC Rcd at 19876.

² These two public notices are sometimes referred to herein as "the June 2002 Public Notices."

³ 47 C.F.R. §80.371(c)(3).

⁴ 47 C.F.R. §2.106, n.G5.

The Commission did not, however, specifically set aside Channel 87B as one of the AIS channels, believing at the time, that the public interest benefits flowing from such an approach were minimal as compared to the potential adverse impact on licensed public coast stations. The Commission observed that setting aside Channel 87B would require the relocation of a number of public coast stations currently authorized to use Channel 87, would raise the cost of the necessary equipment, and would harm maritime VPC licensees' ability to construct wide-area systems. *id.*, at 19877. Instead, the Commission required VPC geographic licensees in maritime areas to negotiate with the Coast Guard regarding what channels to select for AIS use. The Commission also provided that it would revisit the issue and select the channels if good faith negotiations did not yield an agreement. Thus, Section 80.371(c)(3) of the Rules assigns frequencies to public coast stations for public correspondence communications with ships' stations and units on land. The rule specifically provides that within six months of bidding to determine licensees in each public coast station area, the Coast Guard must submit a plan to each licensee for use in the ports and waterways safety system ("PAWSS"). Final selection can be negotiated and established by an agreement, and parties are required to negotiate in good faith. If no agreement is reached within one year, the Coast Guard can petition the FCC to select the channel pairs.

The November 7 Public Notice recites that in 2001, the Coast Guard and Maritel entered into a frequency agreement.⁵ Subsequently, in 2002, the NTIA⁶ approved the use of Channel 88B for AIS. The Wireless Bureau's June 2002 Public Notices were released in light of these

⁵ Maritel refers to the agreement as a Memorandum of Agreement ("MOA").

⁶ The NTIA manages the government's use of radio spectrum. It is the Executive Branch's voice on domestic and international telecommunications issues.

developments. Maritel states in its emergency petition that it has now terminated the MOA with the Coast Guard.

Maritel's Arguments⁷

Maritel contends that absent a declaratory ruling, ships' stations will be enabled to use Maritel's authorized frequencies which it obtained through auction as the exclusive entity to operate duplex channels for VPC use.⁸ Accordingly, Maritel asserts that transmissions of AIS messages on shore station channels will destroy its ability to provide mariners communications services.

Maritel and the Coast Guard entered into the MOA which gave the Coast Guard VPC spectrum for use in PAWSS on frequencies 87A and 87B. According to Maritel, absent the MOA, the Coast Guard had no right to these frequencies. Hence, when the Coast Guard informed the Commission that NTIA had approved its use of Channels 87B and 88B nationwide for AIS, the Commission incorrectly presumed the existence of the MOA. While there is no clear indication as to why the MOA was ultimately terminated, Maritel claims that it terminated the MOA because it was unable to reach an agreement with the Coast Guard on the manner in which the latter could use spectrum without destroying Maritel's ability to utilize its authorized channels. Maritel argues that the Coast Guard has failed to cooperate in order to resolve the matter, and that the Coast Guard lost the right to the frequencies immediately upon termination

⁷ On November 19, 2003, the Commission released yet another public notice (DA 03-3669) seeking further comments on Maritel's proposal to serve as "Automatic Identification System (AIS) frequency coordinator." Nauticast intends to file comments with regard to that public notice at the appropriate time.

⁸ Results of the auctions were announced in Public Notice, DA 99-195, released May 21, 1999; Public Notice, DA 01-1443, released June 15, 2001.

of the MOA.⁹ It is no longer appropriate, contends Maritel, for the Commission to allow AIS transmitters to operate on the noted channels in advance of the agency's anticipated adoption of regulations.

Maritel alleges that the June 2002 Public Notices violate the Administrative Procedure Act ("APA") because the public notices did not properly amend Section 80.371(c) of the Rules to allow ships' stations to transmit on Channels 87B and 88A. Indeed, Maritel notes that those channels are not among those designated for ships' stations because they are allocated to coast station use only. Maritel argues that the June 2002 Public Notices created great ambiguity because, while reiterating the Coast Guard statements concerning interim regulations to require vessels to carry AIS transmitters, the public notices nevertheless did not specify the implicated AIS channels. Maritel observes that if the Commission were authorizing shipborne stations to operate on Channels 87B and 88B, it would be violating its own rule, and to do so would amount to a rule change not conforming to the APA. This is reason alone, maintains Maritel, for the FCC to clarify that shipborne stations cannot transmit on the subject channels in violation of Section 80.371(c) of the Rules, for the APA requires that rulemaking proceedings must be conducted pursuant to notice and comment.

Maritel further alleges that the Commission no longer has reason to believe that Channel 87B can be used for shipborne AIS stations in light of the fact that the MOA has been terminated. It states that although the Commission could not have anticipated the change in circumstances when it issued the June 2002 Public Notices, the basis for its conclusions regarding Channel 87B

⁹ In a July 18, 2003 letter to NTIA from the Coast Guard, Rear Admiral C.I. Pearson states that Maritel had asserted that it (Maritel), rather than the Federal Government, has exclusive rights to the use of Channel 88B within 75 miles of the Canadian border. This letter is annexed to NTIA's petition for rulemaking.

have nevertheless been eliminated. Indeed, Maritel asserts that it has informed the Coast Guard that AIS technology is flexible, and provides the Coast Guard with the ability to use other channels with minimal impact to Maritel's authorizations.

Discussion

Nauticast vigorously opposes Maritel's Petition. It is procedurally defective, at odds with the present state of domestic and international affairs, and wrong in its analysis of the law. It represents an attempt by a private company to usurp functions of the federal government and would, if granted, harm both entrepreneurs who had relied upon legitimate expectations, as well as the public whose security could be dangerously compromised.

Maritel's Request is Deficient

To begin with, Maritel has not supplied the kind of information that would justify the extraordinary relief it seeks. Nauticast believes that Maritel should be required to present specific evidence regarding exactly how it will be injured by the use of the channels in question for AIS operation. It is well established that there are no strict regulatory requirements that limit the Commission's jurisdiction to consider petitions for declaratory ruling; however, the presence or absence of standing is a useful factor for the agency to consider in determining whether a "controversy" or "uncertainty" exists in a form sufficiently crystallized to warrant consideration in the context of a declaratory ruling. *See, Omnipoint Communications, Inc.*, 11 FCC Rcd 10785 (1996). An important element of standing is injury in fact redressable by the relief requested. *Branton v. FCC*, 993 F.2d 906, 908 (D.C. Cir. 1993), cert denied, 114 S Ct 1610 (1994). A litigant must demonstrate that it has suffered a concrete injury that was caused by the action complained of and will be redressed by a decision in its favor. *See, Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). Maritel's vague claim that its authorized operations will

be impacted by the exclusive use of Channels 87B and 88B for AIS is nowhere supported by its petition. It neither describes the scope of its present operations, nor addresses the potential disruption of existing mariner service operations. Importantly, Section 80.49¹⁰ of the Rules provides that a licensee, such as Maritel, must notify the Commission of substantial service within its region or service area within five years of an initial license grant. "Substantial" service is defined as service which is sound, favorable, and substantially above the level of mediocre service which just might minimally warrant renewal. Section 80.49(a)(3)¹¹.

Notwithstanding these absolute requirements of the Commission's Rules, it appears that Maritel has failed to meet its service obligations. The VHF public coast stations for which Maritel was the winning bidder at auction may have resulted in the authorization of coastal stations that have been cancelled or closed for any number of reasons, but the net result is that Maritel has been forced to request the Commission to extend its build-out deadline for two years so that it could use its frequencies for data rather than voice communications. Indeed, information on Maritel's website as well as in its filings with the Commission indicate that it had ceased all services until a new business plan could be developed and implemented. Some of this information has been set forth in the July 30, 2003 joint letter from the St. Lawrence Seaway Development Corporation ("SLSDC") and the United States Department of Transportation ("DOT") attached to NTIA's petition for rulemaking. These are troubling facts. At the very least they show Maritel's inability to demonstrate how it will be injured through the use of the subject

¹⁰ 47 C.F.R. §80.49.

¹¹ 47 C.F.R. §80.49(a)(3).

AIS channels.¹² In any event, the presence or absence of factual disputes is a significant factor in deciding whether a declaratory ruling is an appropriate method for resolving a controversy. *See, e.g., Access Charge Reform (Fifth Report and Order)*, 14 FCC Rcd 14221 (1999). Here, there is significant dispute, so that a declaratory ruling appears an inappropriate way to resolve the controversy, especially where there has been no specific showing of injury by the petitioner.

There Has Been No APA Violation
a) Homeland Security

Maritel's argument that the FCC's June 2002 Public Notices have illegally amended the rules in violation of the APA is entirely unconvincing. More importantly, it is dangerously wrongheaded because it fails to consider the post-9/11 world in which we now live, a world far different from that which existed when the Commission adopted its Third Report and Order, and amended its maritime rules in 1998. AIS is presently an important constituent of our country's homeland security. Nevertheless, the threat of terror that we now face was not a major consideration when the Commission five years ago chose "flexibility" over specific channel assignments for AIS. The flexibility achieved through allowing parties to negotiate with the Coast Guard, while understandable at the time, does not serve the public interest in any manner approaching a coordinated and uniform effort to preserve our national safety and homeland security today.

The most effective frequency assignment allocates Channels 87A and 88B for AIS because they are already designated by international agreement and pose the least encumbrance for other communications services. Maritel's statement that other frequencies could be appropriately used for AIS is nonsense. There are no other frequencies available in the Marine

¹² The facts may also throw light upon Maritel's problematic request that it be designated as AIS frequency coordinator.

Band that are not already controlled by Maritel. Further, if alternate channels were to become available for AIS, substantial difficulties would arise. When foreign ships operating on the International Telecommunications Union ("ITU") frequencies approached our shores, frequency reassignments would have to be automatically coordinated through a network of VHF shore stations that would be required to cover every mile of United States coastline. That kind of communications infrastructure is surely not in place. Even if sufficient funds existed to implement such a network, it would take years to authorize and construct, a highly impractical alternative in light of the internationally accepted AIS implementation schedule and the urgency of homeland security that can be advanced through efficient AIS use.

The NTIA has noted that AIS will be essential in fulfilling portions of the "homeland security mission requirements to protect ports and inland waterways within the United States."¹³ Moreover, it is of compelling importance that the 1997 World Radiocommunication Conference designated channels 87B and 88B for AIS use on the high seas. The geographic range of AIS signals from ships on the high seas extends from 20-50 miles. ITU regulations require ships on international voyage to operate AIS on Channels 87B and 88B. The international boundary extends only twelve miles from our shores, so the channels in question are already fully dedicated to AIS service independent of any Commission or Coast Guard proceeding. How could the channels be of significant commercial value to Maritel when they are already being utilized throughout coastal regions pursuant to international treaty? The consistency that results from the uniform use of these channels makes their widespread operation highly efficient. Otherwise, it would be necessary to identify and switch to disparate channels within each and

¹³ See, October 24, 2003 letter from Fredrick R. Wentland to John B. Muleta, Chief, Wireless Telecommunications Bureau. Attachment 2.

every jurisdiction! If nothing else, the prospect of disastrous collisions would be markedly increased.

b) APA Exemption/Logical Outgrowth of Rulemaking

The joint July 30, 2003 letter from the DOT and the SLSDC, points out that SLSDC uses AIS to monitor "high interest vessels " Further, the seaway between Montreal, Canada and Lake Erie utilizes an AIS system on Channels 87B and 88B. Industry Canada also uses those channels for the operation of the Canadian portion of the seaway. As NTIA has made clear, the US-Canadian AIS operation is international and unified: "The security of the United States as well as the safety of the ships that use its waterways cannot be put at jeopardy simply because Maritel has requested the Commission to withdraw the authorization of shipborne users to operate on Channels 87B and 88B."

As noted, *supra*, Section 80.371(c)(3) of the Rules requires parties to negotiate AIS channels in good faith following auction. Then, if no agreement is reached, the Coast Guard may petition the Commission to select the channel pairs. In this case, however, we are not dealing with a question of negotiations as contemplated by the rules. Rather, the Coast Guard and Maritel successfully entered into the MOA which defined their rights and obligations and gave the Commission, all other regulatory/enforcement bodies and the public notice that Channels 87B and 88B would be utilized for AIS operation. In reliance upon this agreement, Nauticast proceeded with its own business plan and successfully marketed and sold AIS equipment. It is more than interesting that Maritel would now wait almost one and a half years after release of the June 2002 Public Notices to raise its objections to the subject channels. In fact, the Commission may take official notice of the numerous grants of equipment authorizations that it has issued to various companies since the June 2002 Public Notices. At no time did Maritel protest. In light

of Nauticast's and similarly situated companies' justifiable reliance upon the use of the subject channels, Maritel should be estopped from now advocating its own private interests against the greater public interest of uniform, worldwide coordination and homeland security. There is something horribly amiss if a private enterprise like Maritel is able to determine the frequencies necessary for safety and security and objects only after others have committed significant resources and expertise to AIS.

Under these circumstances, it is impossible to conclude that the June 2002 Public Notices somehow violate the APA. Section 553(a) of the APA¹⁴ provides for the general notice of proposed rulemaking to be published in the Federal Register, and further provides for notice and comment prior to a decision. Section 553(a) states as follows:

- (a) This section applies, according to the provisions thereof, except to the extent that there is involved --
 - (1) a military or foreign affairs function of the United States....

Interpreting this provision, courts have established that the military function exemption applies to civilian agencies when a military function is involved, and that the exemption applies when the activities being regulated directly impact on that function. *See, Digital Electronic Message Service (relocation from the 18 Ghz band to the 24 Ghz band/reconsideration)*, 13 FCC Rcd 15147 (1998). Moreover, the Commission has held that Section 553(a) of the APA permits it to forego the procedural requirements that typically apply in rulemakings in matters directly impacting a military function of the United States. Surely, the need to preserve homeland security through the Coast Guard and other institutions contemplates the military exemption included within the APA. Hence, even if Maritel were correct that in some way the June 2002

¹⁴ 5 U.S.C. §553(a).

Public Notices implicate the APA, that argument would be neutralized by the aforementioned exemption to the Act.

Additionally, the June 2002 Public Notices did not violate the APA notice and comment rulemaking requirements because there was already a rulemaking initiated to address a set of channel pairs. *See, Amendment of the Commission's Rules Concerning Maritime Communications, Fourth Further Notice of Proposed Rulemaking*, PR Docket No. 92-257, 17 FCC Rcd 227, 235-236 (2001). Therefore, the designation of the AIS channels at issue should be rightly considered a "logical outgrowth" of the Commission's effort to establish technical rules for AIS. An opportunity for comment has been provided and the Commission can, under such circumstances, change its rules accordingly. *See, e.g., 39 Ghz Application Processing Freeze*, 12 FCC Rcd 2910 (1997). The matters at issue in the underlying rulemaking proceeding encompass the assignment of specific AIS channels so that the public notices did not violate the APA.

Conclusion

Maritel has failed to show that it will be injured by the use of Channels 87B and 88B for AIS. Indeed, Maritel's own status is at best uncertain at this time. However, the position Maritel urges would, if adopted by the Commission, cause destruction to AIS manufacturers like Nauticast who have invested millions of dollars to develop the systems that use Channels 87B and 88B for AIS operation. The vast majority of ships required by international treaty to carry AIS equipment are not US flagged, so it is essential to contemplate what would happen when non-US ships fitted with AIS systems travel into American waters. The interference about which Maritel complains would undoubtedly occur even if the Commission grants Maritel the relief it seeks. There is nothing practical that the Commission can do to prevent this since the United States as a matter of international treaty has already consented to the use of AIS in American

waters. For this reason, it would be most counterproductive for the Commission to require different AIS frequencies. It would result in an engineering obstacle fraught with delay and would be extremely costly to implement.

Importantly, what will happen to the multitude of ships that have already been fitted and will be fitted shortly with AIS equipment using the existing frequencies? There are thousands of systems that have already been manufactured according to the currently approved standards in anticipation of a worldwide surge in sales. Thus, the time for Maritel to have complained has long since passed. If AIS in the United States is forced to operate on different frequencies than those used in other countries, AIS will be largely ineffective. Moreover, to force manufacturers to develop systems that utilize other frequencies will at the very least require a new international agreement. The facts that adhere today call for the uniform administration of specific AIS channels, and Maritel should not be heard to complain about public interest developments that transcend its own private agenda.

In light of the foregoing, the Commission should deny Maritel's petition. The Commission should adopt the proposal set forth by NTIA in order to allow continued AIS operation on Channels 87B and 88B.

Respectfully submitted,

NAUTICAST SCHIFFSNAVIGATIONSSYSTEME A.G.

By: 

Bruce A. Eisen
Its Attorney

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901 15th Street, N.W. - Suite 1100
Washington, D.C. 20005
(202) 682-3500

December 1, 2003

ATTACHMENT 1

COPY

FEDERAL COMMUNICATIONS
COMMISSION
WASHINGTON, D.C. 20554

COPY

GRANT OF EQUIPMENT
AUTHORIZATION
Certification

Nauticast Schiffsnavigationssysteme AG
Mariahilferstraße 50/2/11
Vienna, 1070
Austria

Date of Grant: 08/29/2003

Application Dated: 07/29/2003

Attention: Andreas Leach , Chief Technology Officer

NOT TRANSFERABLE

EQUIPMENT AUTHORIZATION is hereby issued to the named GRANTEE, and is
VALID ONLY for the equipment identified hereon for use under the Commission's
Rules and Regulations listed below.

FCC IDENTIFIER: Q8Z13EAQ8Z

Name of Grantee: Nauticast Schiffsnavigationssysteme AG

Equipment Class: Automatic Identification Systems

Notes: AIS-Device "X-Pack DS" (RM 808 AIS)

<u>Grant Notes</u>	<u>FCC Rule Parts</u>	<u>Frequency</u>	<u>Output</u>	<u>Frequency</u>	<u>Emission</u>
		<u>Range (MHZ)</u>	<u>Watts</u>	<u>Tolerance</u>	<u>Designator</u>
	80	156.025 - 162.025	12.5	100.0 Hz	16K0GXW
	80	156.025 - 162.025	12.5	100.0 Hz	11K5GXW
	80	156.525 - 166.525	12.5	100.0 Hz	14K2G2B

The device operates on AIS 1 - Channel 87 (161.975 MHz) and AIS 2 - Channel 88B
(162.025 MHz) with remote frequency assignment capability. This device also has DSC
capability.

Mail To:

EA494383

<https://gulfoss2.fcc.gov/prod/oet/cf/eas/reports/Eas731GrantForm.cfm?mode=COPY&Req...> 11/5/03

ATTACHMENT 2

UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and
Information Administration
Washington, D.C. 20530

October 24 2003

Mr. John B. Muleta
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
The Portals
445 Twelfth Street S.W.
Washington, DC 20554
Dear Mr. Muleta:

The National Telecommunications and Information Administration (NTIA), an Executive Branch agency within the Department of Commerce, manages and authorizes the Federal Government's use of the radio frequency spectrum.¹ For the reasons stated below, NTIA urges the Commission to work with NTIA to allocate the frequencies 161.975 MHz (Channel 87B) and 162.025 MHz (Channel 88B) for government and non-government use on a shared basis nationwide for Automatic Identification Systems (AIS) exclusively.

Channels 87B and 88B are necessary in the United States for AIS operations that are essential for maritime safety and homeland security. AIS is an International Maritime Organization (IMO) recognized broadcast-based shipborne navigation system that serves as the foundation for the system of Vessel Traffic Service (VTS) in the United States operated by the U.S. Coast Guard (Coast Guard), as well as for that already operated along the St. Lawrence Seaway by the Saint Lawrence Development Corporation (SLSDC). The Coast Guard and many port authorities are anxious to implement AIS in ports and waterways in the United States. AIS facilitates the efficient exchange of data between ships and between shore stations and ships that have been fitted with appropriate equipment. This system will be essential in fulfilling portions of the homeland and security mission requirements to protect ports and inland waterways within the United States. Recognizing the importance of an AIS system to collect, integrate, and analyze information concerning vessels operating in or bound for the United States, Congress recently required certain ships to be equipped with and to operate AIS systems pursuant to Coast Guard regulations.²

¹ See 47 U.S.C. § 902(b)(2)(A), see also 47 U.S.C. § 305

² See Maritime Transportation Security Act of 2002, Pub. L. 107-295, § 102, 116 Stat. 2064, 2068-2085 (2002) (adding a new port security subtitle to Title 46 of the U.S. Code). The provision requiring AIS is codified at 46 U.S.C. § 70114. The Coast Guard and the SLSDC have issued rules to implement this statute. See National Maritime Security Initiatives, Area Maritime Vessel, Facility, and Outer Continental Shelf Security, Automatic Identification System, Vessel Carriage Requirement, 68 Fed. Reg. 60447 (October 22, 2003), Seaway Regulations and Rules, Automatic Identification System, 68 Fed. Reg. 9549 (February 28, 2003).

The AIS requires two separate frequencies in order to operate safely and reliably as defined in International Telecommunication Recommendations (ITU-R) VI 1371 and ITU-R VI 1084. Recognizing the importance of this worldwide maritime system, the 1997 World Radiocommunication Conference (WRC-97) designated the use of Channels 87B and 88B for AIS use on the high seas. Channels 87B and 88B are considered wideband channels, each comprising of 25 kHz of spectrum. To ensure a seamless worldwide AIS operation consistent with IMO Resolution A.917(22), the United States should follow the WRC lead and designate Channels 87B and 88B as AIS frequencies thus avoiding the need to identify and switch to other designated AIS channels within each jurisdiction. Switching to other AIS channels increases the potential for negative consequences to maritime safety, such as increasing potential collisions

As clarified in a recent letter to you, Channel 88B is already allocated on a primary basis to the Federal Government. NTIA has already designated this channel for exclusive AIS use. The other channel necessary for AIS operation, Channel 87B, is currently allocated to very high frequency (VHF) public correspondence service. Channel 87B was auctioned by the Commission as part of a block of VHF Public Coast areas (VPC) frequencies in 1998. As part of this auction, the Commission required winning licensees to negotiate with the Coast Guard to specify two offset narrowband channel pairs for AIS use in the Ports and Waterways Safety System (PAWSS).³ MarITEL was one of the auction winners. The Coast Guard and MarITEL entered into a Memorandum of Agreement (MOA) through which both parties agreed that Channel 87B would be used for AIS and related safety systems. At the time, the Commission supported this

³ AIS base station operations are permitted in ITU-R M 1371. Since the process used to assign and broadcast in Time Division Multiple Access slots can create schedule conflicts between AIS base stations, base station use of AIS time slots and frequencies must be subject to coordination by a competent authority (i.e., the Coast Guard) to ensure safety of navigation and security.

⁴ See Letter to John B. Muleta, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Frederick R. Wentland, Associate Administrator, Office of Spectrum Management, NTIA, in DA 03-2223 (August 1, 2003).

⁵ See NTIA Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual) at Section 4.1.3 (revised May 2003, see also 47 C.F.R. § 2.106).

⁶ See *Amendment of the Commission's Rules Concerning Maritime Communications*, Third Report and Order and Memorandum Opinion and Order 13 F.C.C. Rcd 19853, 19877 (1998). In this Order, the Commission stated that if good faith negotiations failed, the Coast Guard could ask the Commission to revisit the issue and select channels and locations for AIS.

agreement noting that it accomplished the "Commission's goal of providing PAWSS with two narrowband channel pairs"⁷ Moreover, in a recent Commission proceeding addressing the authorization of Channel 87B for AIS operation to meet WRC-97 channel requirements, the Commission concluded that two channel pairs should be set aside in each maritime VPC for AIS for the purpose of enhancing the safety of life and property on vessels in the United States waters by reducing collisions, groundings, and environmental harms.⁸ Although it was originally thought that in the maritime safety context AIS could be operated on narrowband channels, as indicated in the enclosures, subsequent technical analysis and operational experience have confirmed that effective use of AIS for both maritime safety and homeland security requires operating AIS on wideband channels.⁹

The critical need to preserve Channel 87B for use in AIS was recently reinforced in letters from both the U S Department of Homeland Security's Coast Guard, as well as Department of Transportation's SLSDC. These letters clearly outline the importance of dedicating VHF channel 87B for their maritime safety and homeland security missions.¹⁰ Moreover, because Channel 87B is an internationally recognized channel for AIS operations, it must be preserved for AIS so that authorities can monitor international commercial maritime traffic. For example, the SLSDC is responsible for the operations and maintenance of the U S portion of the Seaway between Montreal and Lake Erie and has the authority to prescribe that specific communications, navigation, and other electronic equipment be installed aboard ships in the Seaway in the interests of safety.¹¹ Indeed, the SLSDC is the Coast Guard's legal counterpart along the Seaway, and its AIS system will operate seamlessly with the Coast Guard's system when that system has been

⁷ *Wireless Telecommunications Bureau Announces the Selection of Two VHF Channel Pairs for the United States Coast Guard's Ports and Waterways Safety System*, Public Notice, DA 01-925 (released April 13, 2001)

⁸ *See Amendment of the Commission's Rules Concerning Maritime Communications*, Fourth Further Notice of Proposed Rulemaking 17 F C C Rcd 227, 235 (2001)

⁹ *See* Letter to Fredrick R. Wentland, Associate Administrator, Office of Spectrum Management, NTIA from Emil H. Frankel, Assistant Secretary for Transportation Policy, U S Department of Transportation and Albert S. Jacquez, Administrator, Saint Lawrence Seaway Development Corporation, U S Department of Transportation (July 30, 2003), Letter to Fredrick R. Wentland, Associate Administrator, Office of Spectrum Management, NTIA from C. I. Pearson, Rear Admiral, U S Coast Guard (September 16, 2003).

¹⁰ *Id.*

¹¹ 33 U S C §§ 1223-27, 1231, 1232

completed.¹² The SLSDC uses AIS to monitor high interest vessels such as fuel tankers, hazardous-cargo ships and passenger vessels. According to SLSDC, the Seaway AIS system uses Channels 87B and 88B and Industry Canada also uses those channels for the operation of the Canadian portion of the Seaway AIS system SLSDC. Thus the U.S. - Canadian AIS operation is international and unified. The Coast Guard likewise stressed the need for maintaining Channel 87B because AIS is used as a maritime domain awareness (MDA) tool in support of homeland security and navigation safety.

This issue is of paramount concern because of recent efforts by MariTEL to prevent the maritime industry's and the Federal Government's use of these channels. Among their efforts is a recently filed Emergency Petition that seeks a declaratory ruling from the Commission that shipborne AIS transmitters may not operate on Channel 87B or Channel 88B.¹³ NTIA hereby opposes that Emergency Petition. As stated above, Channel 88B is already allocated on a primary basis to the Federal Government, thus MariTEL's claims with respect to that channel are without merit. More importantly, the security of the United States as well as the safety of the ships that use its waterways cannot be put at jeopardy simply because MariTEL has requested the Commission to withdraw the authorization of shipborne users to operate on Channels 87B and 88B. The practical and legal implication of a private company dictating the use of frequencies necessary for maritime safety and homeland security is a serious cause of concern for this country's spectrum management process.

MariTEL also terminated the MOA that the Commission required it to enter into with the Coast Guard. While the Commission initially considered and rejected designating channel 87B for AIS, it stated that if good faith negotiations failed in selecting AIS channels, the Commission would revisit the issue. Specifically, the Commission stated that "[i]f good faith negotiations yield no agreement within one year of the date the Coast Guard submitted its initial proposal, the Coast Guard may ask the Commission to revisit this issue and select the channels and locations."¹⁴ The Commission noted that by permitting the Coast Guard and the VPC licensee to negotiate a plan to select the channels for AIS, the Coast Guard would have "time to develop its AIS plans fully and coordinate AIS frequencies with neighboring countries." The Commission clearly assumed that negotiations could result in the identification of channels for AIS. A change in that agreement, i.e., a change in the channels designated for AIS, would negate any planning that the Coast Guard put into developing the AIS system for the U.S. as well as neighboring countries.

In practical terms, termination of Channel 87B and Channel 88B authorizations would preclude Canada from using the frequencies thus disrupting both U.S. and Canadian Seaway

¹² See 33 U.S.C. § 1221 *et seq.*

¹³ See MariTEL Emergency Petition for Declaratory Ruling (filed October 15, 2003).

¹⁴ Third Report and Order and MO&O at ¶ 49.

operations. More importantly, there is no practical plan to transition to a different frequency for AIS operations other than 87B and 88B without negative consequences to maritime safety and homeland security. The U.S. Government would also have to expend considerable time, money and resources to implement a new plan, assuming one is possible.

NTIA urges the Commission to work with NTIA to allocate Channels 87B and 88B for exclusive AIS operations by deleting current footnote US 223 and adding the following footnote to the U.S. Table of Frequency Allocations:

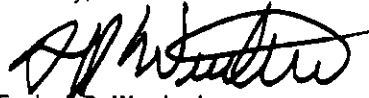
US Footnote XXX

Channel 87B (161.975 MHz +/- 12.5 kHz) and Channel 88B (162.0125 MHz +/- 12.5 kHz) are allocated exclusively for AIS in coastal and navigable waterways.

This change to the U.S. Table of Frequency Allocations would be consistent with the designation in the international table of allocations that recognizes Channels 87B and 88B for the AIS. Moreover, this change would ensure maritime safety and homeland security needs are met. Meeting these concerns is consistent with recent action by Congress requiring the Coast Guard to establish AIS carriage requirements for vessels operating in U.S. waters to improve maritime safety and security.¹⁵ Allocating these channels to AIS would eliminate any future need to revisit this issue unlike the current situation caused by a failure to reach agreement or a change in circumstance by a licensee. Such certainty is paramount to the long term goal of stable investment in AIS, an important safety and security technology.

NTIA looks forward to working with the Commission in this matter to ensure maritime safety and homeland security within the United States.

Sincerely,



Fredrick R. Wentland
Associate Administrator
Office of Spectrum Management

Enclosures

cc Edmond J. Thomas, Chief, Office of Engineering and Technology

¹⁵See *supra* n. 2

CERTIFICATE OF SERVICE

I, Toni R. Daluge, a secretary in the law firm of Kaye Scholer LLP, do hereby certify that on this 1st day of December, 2003, a copy of the foregoing "Comments of Nauticast Schiffsnavigationssysteme A.G." was sent via United States mail, postage prepaid, to the following:

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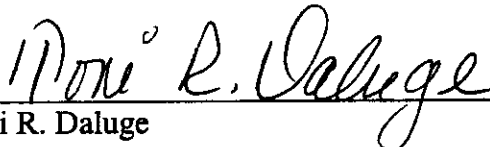
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